

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AMBER AUBONE,

Plaintiff,

V.

HEB

Defendant.

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Civ. No. 5:20-cv-1472

**DEFENDANT’S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION**

H-E-B, LP, improperly named herein as “HEB” (referred to herein as “Defendant”), hereby removes the state court action entitled *Amber Aubone v. HEB*, Cause No. 2020-CI-21419, originally filed in the 285th Judicial District Court of Bexar County, Texas (the “Lawsuit”), to this Court pursuant to 28 U.S.C. §§1331 and 1446. In support thereof, Defendant states as follows:

A. Exhibits

The following documents are attached to comply with 28 U.S.C. §1446(a) and (b).

Exhibit A – Plaintiff’s Original Petition

Exhibit B - Defendant’s Original Answer

Exhibit C - State Court Docket Sheet

Exhibit D - Index of Matters Being Filed

Exhibit E - List of All Counsel of Record

Exhibit F - Defendant’s Notice of Consent to Removal

Exhibit G – Plaintiff’s Narrative of Discrimination by HEB

There are no orders signed by the state court judge.

B. Background and Basis for Removal

1. On November 3, 2020, Pro Se Plaintiff Amber Aubone filed her Petition in the 285th Judicial District Court of the State of Texas in and for Bexar County, Texas, styled *Amber Aubone v. HEB*, Cause No. 2020-CI-21419. A copy of Plaintiff's Original Petition is attached hereto as Exhibit "A".

2. Defendant H-E-B, LP was never served.

3. Nonetheless in an abundance of caution, Defendant filed an Original Answer and Special Exceptions on December 7, 2020 a copy of which is attached hereto as Exhibit "B". The Original Answer was served on Plaintiff via hand delivery, email, certified mail and regular mail. Following Defendant's Answer, Plaintiff filed a "Narrative of Discrimination by HEB, a copy of which is attached hereto as Exhibit "G".

4. Removal is proper because Plaintiff's suit involves a federal question. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331 and 1441(a). *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 525 U.S. 308, 312 (2005); *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194. Specifically, Plaintiff's claims arise under federal law as Plaintiff alleges that Defendant had a duty to ensure its employees were compliant with federal law. Furthermore, Plaintiff alleges that per the Civil Rights Act of 1964, Defendant cannot discriminate by refusing customers service on the basis of disability or race and that is the basis of her lawsuit.

5. Defendant is informed and believes that Plaintiff is a resident of the State of Texas based on statements contained in Plaintiff's Original Petition. The incident made the basis of this lawsuit occurred in Bexar County, Texas.

6. Defendant, H-E-B, LP is and at all times relevant to this action was, a limited partnership. Defendant has its principal place of business in Texas.

7. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b); *see Brown v. Demeo, Inc* , 792 F.2d 478, 481-82 (5th Cir. 1986); *see also Delgado v. Shell Oil Co.*, 890 F. Supp. 1324, 1345 (S.D. Tex. 1995). Notice of Removal is timely filed as 30 days have not lapsed since the time Defendant became aware of Plaintiff's Original Petition in this case. Defendant to date has not received service of Plaintiff's Original Petition, however, Defendant became aware of the lawsuit and filed its Answer on December 7, 2020. *See* Exhibit C (State Court Docket Sheet).

8. All pleadings, process, orders, and all other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a).

9. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court in which the action is pending.

11. In accordance with 28 U.S.C. §1441(a), this matter is being removed to the U.S. District Court for the Western District of Texas, San Antonio Division because this court is the court for the district and division embracing the place where such action is pending, i.e., Bexar County, Texas.

12. Defendant consents to the removal of this case to federal court. 28 U.S.C. § 1446(b)(2)(A) (providing "all defendants who have been properly joined and served must join in or consent to the removal of the action."). *See* Exhibit F.

13. Plaintiff did not demand a jury trial in her Original Petition filed in the state court action. *See* Exhibit A, Plaintiff's Original Petition.

C. Conclusion

For the reasons stated above, Defendant prays that the action now pending in 285th Judicial District Court of the State of Texas in and for Bexar County, Texas, styled *Amber Aubone v. HEB*, Cause No. 2020-CI-21419, as described herein, be removed to the United States District Court for the Western District of Texas, San Antonio Division, and for any and all other relief to which Defendant may be justly entitled.

Respectfully submitted,

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By: /s/ Krishna Reddy
KRISHNA REDDY
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MARTINA MERITZ
SBN: 24037098
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent in accordance with the Texas Rules of Civil Procedure this the 29th day of December, 2020 properly addressed as follows:

Amber Aubone
10707 West Interstate IH-10
#1010
San Antonio, Texas 78230

Served Via Hand Delivery, E-mail: amberaubone1977@gmail.com, Certified Mail and Regular Mail

By: /s/ Krishna Reddy

KRISHNA REDDY